The Malayan Law Journal

1966

Reports of Malaysian and Singapore Cases

DETERMINED BY

THE HIGH COURTS

AND BY

THE FEDERAL COURT

AND

ON APPEAL THEREFROM TO THE YANG DI-PERTUAN AGONG OF MALAYSIA

AND THE PRESIDENT OF THE REPUBLIC OF SINGAPORE

FOR THE OPINION OF THE

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

NEW INDIA ASSURANCE CO. LTD. v. SIMIRAH

[F.C. (Thomson L.P., Ong Hock Thye F.J. and Ismail Khan J.) February 13, 1966]

[J.B. — Federal Court Civil Appeal No. 34 of 1965]

Road Traffic — Motor insurance — Claim against insurance company — Car sold by insured to third party — Road Traffic Ordinance, 1958, s. 80(1).

Insurance — Liability to satisfy judgment for damages — Observations on need for some form of social insurance.

The respondent had obtained judgment for damages against one Chong, the driver of a motor car, arising from the death of her husband who had been knocked down and killed by the motor car. She sought to enforce the judgment against the insurance company. The defence was that the car was insured in the name of one Chua and that Chua had sold the car to Chong the driver of the car. Although Chua had handed the insurance documents to Chong this, it was contended, did not amount to an assignment of the benefit of the insurance policy. At the trial the learned judge held that the property in the car had not passed from Chua and he gave judgment for the respondent. On appeal,

Held: on the evidence in this case the ownership of the car had passed to Chong and therefore the insurers were not liable to satisfy the judgment.

Cases referred to:—

(1) *Burr* v. *Ware Rural District Council* [1939] 2 All E.R. 688.

(2) *Peters* v. *General Accident, Fire and Life Assurance Corporation Ltd.* (1937), 54 T.L.R. 202.

FEDERAL COURT.

G. S. Hill (*M. Coomaraswamy* with him) for the appellants.

T. S. Chiam for the respondent.

Cur. Adv. Vult.

Ong Hock Thye F.J.: This is an appeal against a judge's finding of fact. On February 4, 1960 the respondent's husband died in a road accident involving a vehicle which was covered by a policy of insurance against third party risks issued by the appellants. The accident occurred while the car was being driven by one Chong Swee Peow, into whose possession it had been delivered by Chua Hock Lee, the insured, a few days earlier.

In February 1962 the respondent sued both Chua and Chong for damages but failed in her action. She appealed and a retrial was ordered against Chong alone.* On December 11, 1963 he suffered judgment by default to be passed against him for $10,000 and costs. In the event payment was claimed against the appellants under section 75 of the Road Traffic Ordinance, 1958, as insurers and the question that fell to be decided was whether, at the date of the accident, the policy issued by the company to Chua as owner was in force or had lapsed by reason of an alleged sale and transfer of the car to Chong.

Evidence adduced at the second trial (which was held on April 5, 1965) showed that the car was registered in the name of Chua as owner until April 14, 1960 when another name, Lim Ah Kan, took its place, pursuant to a notice of transfer of ownership in the prescribed R.I.M.V. form No. 5 bearing the date March 12, 1960. Chua, however, stated that, on or about the eve of Chinese New Year — which fell that year on January 28 — he had sold and transferred the car for $550 to his neighbour Chong. The latter confirmed that the sale did take place about that date and that shortly after the accident he had resold the vehicle to a third person, Lim Ah Kan, in whose name it was subsequently registered as a direct transfer from Chua.

The learned trial judge rejected the evidence of both Chua and Chong as false and held that the sale alleged by them was fictitious. He came to such conclusion for the following reasons: (a) that Chua appeared nervous, and it was probable that he pretended there was a sale "so that he need not have anything more to do with the car;" (b) that there was a discrepancy between their

* [1963] M.L.J. 239, C.A.

evidence as to the amount of the first cash payment; (c) that both were vague, when they ought to have been more definite, as to the terms of the sale and the amount of the subsequent instalments agreed to be payable; (d) that upon the resale by Chong he did not pay off, and Chua had not demanded, the balance of instalments in a lump sum; (e) that an alleged memorandum of the transaction in the Chinese language, said to have been made and delivered to Chong, was, strangely enough, kept by Chong at an address in Ho Swee Estate, Singapore, whereas the registration book and insurance certificate were put away elsewhere: to account for his inability to produce the document Chong had explained that it had been destroyed in the great fire which blazed through Ho Swee Estate at the relevant time and burnt down the house he lived in; (f) finally, the learned judge, commenting on their demeanour, said he had noticed that when these two young men gave evidence, "especially regarding the sale, they appeared to be a bit uneasy" and he consequently thought they were lying.

The reasons given by the learned trial judge for his decision are of considerable significance because it necessarily follows that any reason to the contrary, which he failed to mention, could not have been taken into account, however, cogent it may be.

What, in my opinion, is of first importance is the question whether the two young men, whose evidence was disbelieved, had any motive for concocting a fictitious sale. The judge thought it probable that Chua Hock Lee pretended there was a sale "so that he need not have anything more to do with the car. He even failed to attend a court which summoned him to appear, but instead sent Chong Swee Peow". Chua, in fact, was well aware that he had nothing to fear and he had said so in answer to cross-examination:

> "Q. Were you afraid of the accident that you pretended to say you sold the car to this Chong Swee Peow whose negligence caused the accident?
>
> A. I was not afraid of result of accident."

He faced no criminal charge of negligent driving, or of any other offence, because he was not the driver of the car when the accident took place. Nor would he incur any risk of civil liability, had there been no sale in fact, since he would then be indemnified as owner by his insurers. I, therefore, cannot imagine how he could have had any motive at all for departing from the truth. Indeed, the fact that, in May or June 1960, he passed to Chong a summons addressed to himself — for an offence of failing to notify the Registrar of Motor Vehicles of the transfer of his vehicle within 7 days of such transfer — was clear evidence of conduct, both on his part and Chong's, which was consistent only with a sale and transfer of the car, because Chong duly appeared in court, pleaded guilty and paid the fine himself.

Turning to Chong, I can well imagine his motive for denying, rather than affirming, the sale. In the absence of any sale, he would risk no civil liability because the insurance policy would have covered his driving of the vehicle. By asserting a sale, however, as he had done, he was making a statement very much against his own interest, because he was admitting an offence of using a vehicle without there being in force in relation to the user thereof such a policy of insurance as complied with the requirements of the Road Traffic Ordinance 1958 relating to third party risks; he was liable to disqualification from holding a driving licence, and he was, further, liable personally to make good the heavy damages awarded against him, without the benefit of any claim to indemnity under Chua's policy.

In my view, therefore, there were good and cogent reasons for both Chua and Chong to tell the truth, and none whatever for their alleging a fictitious sale.

The remaining grounds for the learned trial judge's decision may be dealt with briefly. There was no discrepancy as to the amount of the initial cash payment. The slip of the pen — when $100 should have read $150 — had been explained and duly rectified. As to Chua and Chong being vague about the precise terms of sale and the amount of instalments, I think that, after the lapse of over five years since the transaction, they may be forgiven if their recollection of details was found wanting. For Chong's reluctance or failure to make a lump sum payment of the balance due to Chua upon resale of the car, what do we know of their respective financial needs at the time to make us think it unrealistic or unreasonable for Chua not to demand and Chong not to pay otherwise than by instalments as agreed? Finally, as to the suspicion raised by non-production of the Chinese memorandum of sale, the explanation given by Chong was that it was destroyed in the Bukit Ho Swee fire. What if this document was not kept with the registration book, insurance and the transfer form in the same premises? Some people are methodical in their habits, others are not. He had not been cross-examined as to why he had done so. More important than this simple document was exhibit P1, the notice of change of ownership (R.I.M.V. Form 5), which was produced. Chua said he had signed Form 5 in blank, a perfectly reasonable explanation, and inspection of the ink on the signature bears him out. The date of registration of the transfer, March 12, 1960, was that of a transfer by resale from Chong to the third party, Lim Ah Kan, so that the sale to Chong must have preceded

Chong's resale to Lim, as Chong had testified.

To conclude, I think I ought to mention that the appellants, as insurers, have been honourably absolved by the learned trial judge of having anything to do with the fabrication of evidence. Therefore, once it was clearly established that the only party who might possibly have had any motive for instigating such fabrication was completely innocent, I am compelled, with the utmost respect to the learned trial judge, to come to the conclusion that there were no grounds for holding Chua and Chong to have fabricated evidence. For my part, I would hold the sale to be true.

I would accordingly allow the appeal with costs.

Thomson L.P.: The plaintiff in this case is the widow and the administratrix of the estate of one Johan bin Alias who, on 4th February, 1960, while cycling along the main road from Ayer Hitam to Kluang was knocked down and killed by a motor-car number SC 7044 driven by one Chong Swee Peow and alleged to be owned by one Chua Hock Lee.

It was alleged that at the material time this motor-car was being driven negligently by Chong Swee Peow and the plaintiff accordingly sued him and Chua Hock Lee for damages. In due course that case came on for trial and at the close of the case for the plaintiff counsel for the defendants submitted that the plaintiff had failed to prove negligence on the part of the driver of the car. The trial judge accepted that submission and dismissed the claim with costs.

Against that decision the plaintiff appealed and this court allowed the appeal as against Chong and ordered a retrial but dismissed it as against Chua. The reason for differentiating between the two respondents and for ordering a retrial in the case of Chong was that the trial judge had overlooked certain admissions by Chong to the police which although they were admissible against himself were not admissible as against Chua (see *Burr* v. *Ware Rural District Council* [1]). In his defence Chua had averred that at the material time he was not the owner of the car SC 7044 but in the circumstances of the trial that averment was not investigated.

At the second trial the plaintiff recovered $10,000 damages against Chong, who did not appear and was not represented. That judgment was not satisfied and accordingly she brought the present proceedings under section 80(1) of the Road Traffic Ordinance against the insurance company with which the car was insured by Chua at the material time and which had issued a certificate of insurance.

The policy of insurance was not in evidence but it is common ground that the insurers had issued a policy of insurance to Chua in respect of the car as his property and the policy contained an extension clause in the usual form covering user by an authorised driver. That policy did not expire till 15th July, 1960.

The insurers resisted the claim against them on the ground that prior to the date of the accident Chua Hock Lee had sold the car and delivered it to Chong Swee Peow and that although Chua had handed the insurance documents to Chong this did not amount to an assignment of the benefit of the policy of insurance issued to Chua in respect of the car. Accordingly they were not liable under the policy. If Chua had indeed ceased to be the owner of the car then that was a good defence (see *Peters* v. *General Accident, Fire & Life Assurance Corporation, Ltd.*[2]) and accordingly the only issue at the trial was whether at the material date, that is 4th February, 1960, Chua had ceased to be the owner.

In the event the trial judge decided that the property in the car had not passed from Chua as averred and judgment was accordingly entered for the plaintiff. Against that decision the insurers have now appealed.

I have had the benefit of reading the judgment that has just been delivered by Ong F.J. I agree with his course of reasoning and I agree with the results to which that course of reasoning has compelled him, that is to say that ownership of the car SC 7044 had at the time of the accident passed to Chong and accordingly that the present appeal must be allowed. In the circumstances it would be otiose to repeat in my own words what has been said by him.

The case, however, is one of a class which is becoming frequent in the courts where an insurer resists claims made against him under section 80(1) of the Road Traffic Ordinance on technical legal grounds arising out of the terms of the relevant insurance policy and I feel I should make certain observations.

In the present case the unsuccessful respondent is the young widow of a rubber tapper with three very young children whose husband has been killed by what a judge has held to be the negligent driving of a motor vehicle. The killer, the driver of the vehicle, is a man of straw wholly unable to pay for the harm he has done. By reason of the law relating to the contract of insurance he was not covered by insurance as required by law, though, to do him justice, he had reason to believe he was so covered because he knew there was an insurance policy in force covering the car and he believed, not unnaturally but as it turned out wrongly, that by reason of

the delivery of the insurance documents to himself the car was covered while he was driving it. Indeed if he had been driving it while it was still the property of the former owner, as for instance he had been driving it with a view to deciding whether he should buy it, it would have been covered while under his control.

And now this widow and these three young children have to face the future deprived of their husband, father and breadwinner without compensation for his loss and indeed faced with a great burden of debt by reason of the costs of these proceedings.

Things like this should not happen in a civilised society. It may be legal justice, it is not social justice.

Hitherto, in this country as elsewhere, the State has recognised to some extent the unfortunate position of victims of road accidents by the requirement of compulsory third party insurance. Experience, however, has shown that that is not enough and that there are cases like the present where by reason of legal technicalities an innocent victim fails to obtain any compensation.

I express the prophecy that sooner or later we shall have to accept the position that compensation for injuries resulting from road accidents should become the subject of some form of social insurance and should not be left to depend on the vagaries of application of the general law relating to negligence.

In the meantime, however, in the United Kingdom insurance companies have recognised the existence on their part of some sort of social duty in the matter by setting up the Motor Insurers Bureau which in cases like the present one will, subject to the fulfilment of certain simple conditions by way of safeguard, pay compensation. The time has long passed when insurance companies in this country should follow this example and I would express the view that if they are not prepared to do so voluntarily pressure should be put upon them to do so by Government.

Ismail Khan J. concurred.

Appeal allowed.

Solicitors: *Rodyk & Davidson; Chong Thutt Pitt & Co.*

TAN CHYE CHOO & ORS. v. CHONG KEW MOI

[F.C. (Thomson L.P., Ong Hock Thye F.J. and Ismail Khan J.) February 13, 1966]

[J.B. — Federal Court Civil Appeal No. 51 of 1965]

Road Traffic — Breach of statutory duty — Whether person injured by the breach entitled to bring action for damages — Motor Vehicles (Construction and Use) Rules, 1959, rr. 93 and 94.

This was an appeal against the decision ([1965] 2 M.L.J. 198) of the learned trial judge who dismissed a claim for damages arising out of injuries sustained in a road accident. The trial judge found that the immediate physical cause of the accident was a mechanical failure in the motor car which resulted in a total failure of the steering and braking systems and rendered it completely out of control. He held however that the duty imposed by rule 94 of the Motor Vehicles (Construction and Use) Rules, 1959, was a public duty and not a duty enforceable by an individual. On appeal,

Held: (1) none of the rules contained in the Motor Vehicles (Construction and Use) Rules, 1959, is one for the breach of which a person injured by the breach is entitled to damages;

(2) it had not been proved that there had been negligence in the maintenance and inspection of the motor car and therefore the appeal must be dismissed.

Cases referred to:—

(1) *Phillips* v. *Britannia Hygienic Laundry Co. Ltd.* [1923] 2 K.B. 832.

(2) *Badham* v. *Lambs* [1946] K.B. 45, 47.

(3) *Clark* v. *Brims* [1947] 1 All E.R. 242.

(4) *Monk* v. *Warbey* [1935] 1 K.B. 75.

(5) *Winter* v. *Cardiff R.D.C.* [1950] 1 All E.R. 819.

(6) *Barkway* v. *South Wales Transport* [1950] 1 All E.R. 392.

FEDERAL COURT.

Denis Murphy for the appellants.

K. E. Hilborne for the respondent.

Cur. Adv. Vult.

Thomson L.P.: This is an appeal in proceedings arising from a collision between a "Chevrolet" taxi and a "Volkswagen" motor car which occurred in good weather on the Johore-Kulai Road at about 2 p.m. on 28th January, 1962. Two of the three occupants of the "Volkswagen" were killed and the third was seriously injured and in consequence the injured man sued the owner of the "Chevrolet" and the administrators of the two deceased also sued her under section 8 of the Civil Law Ordinance, 1956, for the benefit of the respective estates.

In the event the trial judge dismissed the claims and gave judgment for the dependant and against that decision the plaintiffs have now appealed.

On the original pleadings, which were later amended, there was an allegation of negligent driving by the defendant's servant who was driving the "Chevrolet" at the time of the collision. That, however, was never very seriously pressed, indeed the driver was not joined as a defendant, and the trial judge found that the immediate physical cause of the accident was a mechanical failure in the "Chevrolet" which resulted in a total failure of the steering and braking systems and rendered it completely out of control.

That conclusion has not been seriously